

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

CRL.A.No. 1347 of 2007()

AGAINST THE ORDER IN MC.1748/2006 IN S C.552/2006 of ADDL.
SESSIONS COURT(AD HOC-I) THALASSERY
.....

APPELLANTS: RESPONDENTS

1. THANKAMMA, W/O.VASU, AGED 52 YEARS,
HOUSE WIFE, PUTHANPURAYIL, PADIYOOR,
ULIKKAL P.O.
2. PAIY, S/O.PAIY, AGED 44 YEARS,
PULPRA, VAYATHUR, VAYATHUR DESOM,
KALANKI.

BY ADV. SRI.P.P.RAMACHANDRAN

RESPONDENT: COMPLAINANT

STATE OF KERALA,
(SESSION JUDGE, THALASSERY),
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.M.KAMMAPPU

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION
ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER IN CRL.M.A.NO.8001 OF 2007 IN CRL.APPEAL
NO.1347 OF 2007.

DISMISSED

27.7.2007

Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO. 1347 OF 2007

Dated this the 27th day of July, 2007

JUDGMENT

This appeal is filed against the order in M.C. No.1748 of 2006 in S.C. No.552 of 2006 on the file of the Additional Sessions Court (Ad hoc -I), Thalassery.

2. The appellants stood sureties to the accused in the above Sessions Case. Since they failed to produce the accused before the court below as agreed, notice was issued to them for explaining their position. The appellants did not file any explanation inspite of receipt of notice or produce the accused before the court below. Hence, notice was issued to them to show cause why penalty should not be imposed on them. Since there was no explanation, the court below imposed a penalty of Rs.10,000/- each and in default of payment of the amount, the appellants were ordered to undergo simple imprisonment for three months each in civil prison.

3. Admittedly, the appellants stood sureties for the accused in S.C. No.552 of 2006 and they did not appear before the court below inspite of receipt of notice. Learned counsel appearing for the appellants placed reliance on the decision of this Court reported in **Usman v. State of Kerala, 2005(4) K.L.T. 348** and submits that the trial court had not considered the dictum laid down by this Court regarding imposition of penalty. A reading of the above judgment would not show that the discretion of the court was not exercised judicially. The appellants failed to appear before the court below with their explanation for not producing the accused. They also did not show cause why penalty should not be imposed on them. Learned counsel for the appellant could not point out any infirmity in the order. He only pleaded leniency. It is the duty of the sureties to produce the accused in a case where serious allegations are levelled against him. It is seen that in many cases, having granted bail on the basis of the bonds furnished by the sureties, the accused does not appear before the court. This will affect the entire judicial system and the administration of justice as held in the decision of this Court reported in **Thankappan v. State of Kerala, 2007(2) K.H.C. 923**. Hence, this Court is of the view that the impugned order is perfectly justifiable and in accordance with the provisions of Section 446 Cr.P.C. However, the appellants are allowed to deposit the penalty in five equal monthly

instalments of Rs.2000/- each commencing from 15.8.2007. It is made clear that in default of payment of any of the instalments, distress warrant shall be issued for realising the entire amount.

With the above modification, the Crl. Appeal is dismissed.

(K.THANKAPPAN, JUDGE)

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